

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
PORTLAND DIVISION

BANK OF NEW YORK,  
as successor trustee under the pooling and  
servicing agreement dated Sept. I, 1998,  
WMC Series 1998-B without recourse, their  
successors and assigns,

Plaintiff,

Civil No. 09-1473-AC

v.

ORDER

DIANA JOYCE ROBERTS, AND ALL  
OTHER OCCUPANTS OF THE  
PROPERTY LOCATED AT 17930 NE  
WASCO STREET, PORTLAND,  
OREGON,

Defendants.

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HAGGERTY, District Judge:

Magistrate Judge Acosta issued a Findings and Recommendation [26] that recommended granting plaintiff's Motion to Remand [4]. Objections [29] to the Findings and Recommendation were filed by defendants. The matter was then referred to this court for review.

When a party objects to any portion of a Findings and Recommendation, the district court must make a *de novo* determination of that portion of the Findings and Recommendation. 28 U.S.C. § 636(b)(1)(B); *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). Defendants filed objections in a timely manner. The court has given the file of this case a *de novo* review. For the following reasons, the objections are overruled.

### **BACKGROUND**

The Magistrate Judge provided a thorough recitation of the relevant facts previously, and these facts need only be summarized here. Plaintiff pursued proceedings to evict defendant Diana Joyce Roberts and other occupants (defendants) from property located at 17932 N.E. Wasco Street, in Portland, Oregon.

Defendant Roberts removed the eviction action to federal court, and plaintiff sought an Order remanding the case. The Magistrate Judge concluded that defendants failed to establish that removal is proper under either 28 U.S.C. §§ 1441 or 1443, and that plaintiff's remand motion should be granted.

### **ANALYSIS**

The Magistrate Judge provided thorough and proper analysis regarding defendants' jurisdictional problems, and explained why this action must be remanded. Findings and Recommendation at 5-7.

Defendants' Objections challenge the propriety of the caption heading given to the Findings and Recommendation, notes a possible typographical error, and asserts arguments regarding plaintiff's existence and legitimacy. Defendants describe frustration in the state forum's responses to this issue, but fail to overcome the Findings and Recommendation's well-reasoned conclusion that removal to federal court is improper in this case.

**CONCLUSION**

The Findings and Recommendation [26] that recommended granting plaintiff's Motion to Remand [4] is adopted. The Objections [29] to the Findings and Recommendation are overruled. This action is remanded to the Multnomah County Circuit Court. Upon remand, federal action Civil No. 09-1473-AC is dismissed with prejudice, and any other pending motions are denied as moot.

IT IS SO ORDERED.

Dated this 6 day of May, 2010.

/s/ Ancer L. Haggerty  
Ancer L. Haggerty  
United States District Judge